Punitha a/p Padathaly v Salam Alliance Sdn Bhd & Anor

HIGH COURT (SHAH ALAM) — CIVIL SUIT NO BA-23NCvC-40–06 OF 2024
ASMAH MUSA JC
24 NOVEMBER 2025

Civil Procedure — Striking out — Application to strike out action — Plaintiff filed action against operator of clinic and doctor for issuing referral letter diagnosing plaintiff with 'bipolar disorder' without plaintiff's consent — Plaintiff claimed for professional negligence, breach of confidentiality, misuse of medical information, and vicarious liability — Defendants filed application to strike out plaintiff's action — Whether plaintiff's claim was time-barred under s 6(1)(a) of the Limitation Act 1953 — Whether plaintiff's statement of claim disclosed reasonable cause of action — Whether plaintiff's claim was frivolous, vexatious, or abuse of process — Whether plaintiff's action against clinic operator should be struck out for lack of vicarious liability — Whether striking out applications should be refused because the matters raised triable issue — Limitation Act 1953 ss 6(1)(a) & 29 — Rules of Court 2012 O 18 r 19(1)(a), (b) & (d)

On 22 June 2018, the plaintiff was brought by her family members to Klinik As-Salam, a clinic operated by the first defendant, after experiencing emotional distress following the ingestion of medication. She was examined by a doctor by the name of Nik Aiman but there was no psychiatric diagnosis made against her. The problem arose when the plaintiff discovered during a custody proceeding between herself and her ex-husband that another doctor who practiced in Klinik As-Salam ('the second defendant') had issued a referral letter dated 28 June 2018 ('the referral letter') purporting to diagnose the plaintiff with 'bipolar disorder' and recommending psychiatric evaluation, although the plaintiff did not attend the clinic on the said date. The plaintiff alleged that the referral letter was written without any consultation, examination, or clinical assessment, and without her knowledge or consent. The plaintiff then filed a legal action against the defendants alleging professional negligence, breach of confidentiality, misuse of medical information, and as against the first defendant specifically, vicarious liability as the clinic operator. The plaintiff contended that as a direct consequence of the wrongful issuance and disclosure of the referral letter, she suffered emotional distress, reputational damage, and adverse consequences in the custody proceedings for her children. In response, both the defendants filed the present applications (encl 14 and encl 15) to strike out the plaintiff's action pursuant to O 18 r 19(1)(a), (b), and (d) of the Rules of Court 2012 ('the ROC 2012'). The issues to be determined by the court in the present applications were: (a) whether the plaintiff's claim was time-barred under s 6(1)(a) of the

Limitation Act 1953 ('Act 254'); (b) whether the plaintiff's statement of claim disclosed a reasonable cause of action under O 18 r 19(1)(a) of the ROC 2012; (c) whether the plaintiff's claim was frivolous, vexatious, or an abuse of process under O 18 r 19(1)(b) and (d) of the ROC 2012; (d) whether the plaintiff's action against the first defendant should be struck out for lack of vicarious liability; and (e) whether the defendants' applications should be refused because the matters raised triable issue.

Held, dismissing encl 14 and encl 15 with costs in the cause, and ordering that the matter shall proceed to full trial before the court:

(1) The limitation issue in the present case was deeply fact-sensitive. It required determination of: (a) whether the plaintiff had actual knowledge of the referral letter in 2018; (b) whether she could reasonably have discovered it earlier; (c) whether the second defendant's conduct in providing the referral letter to the husband constituted 'concealment' under s 29 of Act 254; and (d) when the plaintiff first became aware of the letter during custody proceedings. At this preliminary stage, the court was not satisfied that the defendants had shown that the action was plainly time-barred. The plaintiff's reliance on s 29 of Act 254 could not be dismissed as unsustainable. Accordingly, the limitation argument was unsuitable for summary disposal. The issue shall proceed to trial where evidence may be properly tested (see paras 74 & 77–78).

(2) With respect to whether the plaintiff had pleaded a reasonable cause of action, the court found that: (a) in relation to negligence and duty of care — the issue of whether the duty of care was breached by failing to examine the plaintiff before issuing a psychiatric referral letter required medical evidence and it was unsuitable for disposal at interlocutory stage; (b) with regard to breach of confidentiality — the issue of whether the husband's request for the referral letter constituted lawful 'authorisation' was a factual issue unsuitable for striking out; (c) in respect of wrongful disclosure — the plaintiff's allegation that the said letter portrayed her as psychiatrically unstable and was later used to challenge her parental fitness, could not be dismissed without evidence, and at the striking out stage, the court could not make findings on intention, context, or appropriateness of medical communication; and (d) in relation to causation and loss — the plaintiff had pleaded recognisable damage, ie, reputational injury, emotional harm, and detrimental impact in custody proceedings and these suffice to maintain a cause of action. Therefore, the court found that the statement of claim clearly disclosed a triable cause of action. Whether the claim would ultimately succeed was a matter for trial, not summary disposal (see paras 83, 86, 88–89 & 92–93).

(3) The defendants' assertion that the suit was frivolous was not borne out by the pleadings. Allegations of medical negligence and breach of

confidentiality were inherently serious. Further, there was no evidence of improper motive, collateral purpose, or mala fides on the part of the plaintiff. She initiated the present action after discovering the referral letter in court proceedings. The late service of the writ, although irregular, did not demonstrate prejudice or ulterior motive. In addition, the threshold for abuse of process was high and required clear evidence. No such evidence existed in the present case. In short, the court found no basis to characterise the plaintiff's action as frivolous, vexatious, or an abuse of process. The seriousness of the allegations and the existence of disputed facts strongly supported allowing the matter to proceed (see paras 94–97 & 123–124).

(4) The plaintiff was only required at the pleading stage to allege a factual nexus. She had pleaded that: (a) the second defendant was practising at the first defendant's clinic; (b) the first defendant operated and managed the clinic; and (c) the acts occurred within the scope of that arrangement. These allegations fulfilled the minimum threshold to establish a prima facie claim of vicarious liability. Whether the relationship was one of employment, agency, supervision, or commercial integration must be determined at trial, not at a preliminary striking-out stage. Therefore, the claim against the second defendant should not be struck out (see paras 105–107 & 113).

[Bahasa Malaysia summary

Pada 22 Jun 2018, plaintif telah dibawa oleh ahli keluarganya ke Klinik As-Salam, sebuah klinik yang dikendalikan oleh defendan pertama, selepas mengalami tekanan emosi setelah mengambil ubat. Dia telah diperiksa oleh seorang doktor bernama Nik Aiman tetapi tiada diagnosis psikiatri dibuat terhadapnya. Masalahnya timbul apabila plaintif mendapati semasa prosiding hak penjagaan antara dirinya dan bekas suaminya bahawa seorang lagi doktor yang beramal di Klinik As-Salam ('defendan kedua') telah mengeluarkan surat rujukan bertarikh 28 Jun 2018 ('surat rujukan tersebut') yang kononnya mendiagnosis plaintif dengan 'gangguan bipolar' dan mengesyorkan penilaian psikiatri, walaupun plaintif tidak hadir ke klinik pada tarikh tersebut. Plaintif mendakwa bahawa surat rujukan tersebut ditulis tanpa apa-apa perundingan, pemeriksaan, atau penilaian klinikal, dan tanpa pengetahuan atau persetujuannya. Plaintif kemudian memfailkan tindakan undang-undang terhadap defendan-defendan yang mendakwa kecuaian profesional, pelanggaran kerahsiaan, penyalahgunaan maklumat perubatan, dan terhadap defendan pertama khususnya, liabiliti vikarius sebagai pengendali klinik. Plaintif berhujah bahawa sebagai akibat langsung daripada pengeluaran dan pendedahan secara salah surat rujukan tersebut, dia mengalami tekanan emosi, kerosakan reputasi, dan akibat buruk dalam prosiding hak penjagaan anak-anaknya. Sebagai tindak balas, kedua-dua defendan memfailkan permohonan-permohonan semasa (lampiran 14 dan lampiran 15) untuk

membatalkan tindakan plaintif menurut A 18 k 19(1)(a), (b), dan (d) Kaedah-Kaedah Mahkamah 2012 ('KKM 2012'). Isu-isu yang perlu ditentukan oleh mahkamah dalam permohonan-permohonan semasa ialah: (a) sama ada tuntutan plaintif telah dihalang oleh had masa di bawah s 6(1)(a) Akta Had Masa 1953 ('Akta 254'); (b) sama ada pernyataan tuntutan plaintif mendedahkan kausa tindakan yang munasabah di bawah A 18 k 19(1)(a) KKM 2012; (c) sama ada tuntutan plaintif tersebut remeh, menyusahkan, atau penyalahgunaan proses di bawah A 18 k 19(1)(b) dan (d) KKM 2012; (d) sama ada tindakan plaintif terhadap defendan pertama harus dibatalkan kerana ketiadaan liabiliti vikarius; dan (e) sama ada permohonan defendan-defendan tersebut harus ditolak kerana kes tersebut menimbulkan isu yang boleh dibicarakan.

Diputuskan, menolak lampiran 14 dan lampiran 15 dengan kos dalam kausa, dan memerintahkan supaya kes hendaklah diteruskan kepada perbicaraan penuh di hadapan mahkamah:

(1) Isu had masa dalam kes semasa sangat sensitif terhadap fakta. Ia memerlukan penentuan: (a) sama ada plaintif mempunyai pengetahuan sebenar tentang surat rujukan tersebut pada tahun 2018; (b) sama ada dia secara munasabah boleh menemuinya lebih awal; (c) sama ada tindakan defendan kedua dalam memberikan surat rujukan tersebut kepada suami plaintif merupakan 'concealment' di bawah s 29 Akta 254; dan (d) bilakah plaintif mula-mula menyedari tentang surat tersebut semasa prosiding hak penjagaan. Pada peringkat awal ini, mahkamah tidak berpuas hati bahawa defendan-defendan telah menunjukkan bahawa tindakan tersebut jelas dihalang oleh had masa. Pergantungan plaintif pada s 29 Akta 254 tidak boleh ditolak sebagai tidak mampan. Oleh itu, hujah had masa tidak sesuai untuk pelupusan secara terus. Isu ini hendaklah diteruskan ke perbicaraan di mana keterangan boleh diuji dengan betul (lihat perenggan 74 & 77–78).

(2) Berkenaan sama ada plaintif telah mendedahkan kausa tindakan yang munasabah, mahkamah mendapati bahawa: (a) berhubung dengan kecuaian dan kewajipan berjaga-jaga — isu sama ada kewajipan berjaga-jaga telah dilanggar apabila defendan gagal memeriksa plaintif sebelum mengeluarkan surat rujukan psikiatri tersebut memerlukan keterangan perubatan dan ia tidak sesuai untuk dilupuskan pada peringkat interlokutori; (b) berkenaan dengan pelanggaran kerahsiaan — isu sama ada permintaan suami untuk surat rujukan tersebut merupakan 'kebenaran' yang sah adalah isu fakta yang tidak sesuai untuk dibatalkan; (c) berkenaan dengan pendedahan salah — dakwaan plaintif bahawa surat tersebut menggambarkannya sebagai tidak stabil dari segi psikiatri dan kemudiannya digunakan untuk mencabar kebolehan keibubapaannya, tidak boleh ditolak tanpa keterangan, dan pada peringkat pembatalan, mahkamah tidak boleh membuat dapatan

mengenai niat, konteks, atau kesesuaian komunikasi perubatan; dan (d) berhubung dengan sebab-akibat dan kerugian — plaintif telah memplid kerugian yang boleh dikenal pasti, iaitu, kecederaan reputasi, kemudaratan emosi, dan kesan buruk dalam prosiding jagaan dan ini mencukupi untuk mengekalkan kausa tindakan. Oleh itu, mahkamah mendapati bahawa pernyataan tuntutan tersebut dengan jelas mendedahkan kausa tindakan yang boleh dibicarakan. Sama ada tuntutan tersebut akhirnya akan berjaya atau tidak adalah perkara untuk perbicaraan, bukan pelupusan secara terus (lihat perenggan 83, 86, 88–89 & 92–93).

(3) Dakwaan defendan-defendan bahawa saman tersebut remeh tidak disokong oleh pliding. Dakwaan kecuaian perubatan dan pelanggaran kerahsiaan sememangnya serius. Tambahan pula, tiada bukti menunjukkan motif yang tidak wajar, tujuan sampingan, atau mala fide di pihak plaintif. Dia memulakan tindakan semasa selepas mengetahui tentang surat rujukan tersebut dalam prosiding mahkamah. Penyampaian writ yang lewat, walaupun tidak teratur, tidak menunjukkan prejudis atau motif tersembunyi. Di samping itu, ambang penyalahgunaan proses adalah tinggi dan memerlukan keterangan yang jelas. Tiada keterangan sedemikian yang wujud dalam kes semasa. Pendek kata, mahkamah tidak menemui asas untuk mencirikan tindakan plaintif sebagai remeh, menyusahkan, atau penyalahgunaan proses. Keseriusan dakwaan dan kewujudan fakta yang dipertikaikan sangat menyokong pemberian perintah agar kes semasa diteruskan ke peringkat perbicaraan (lihat perenggan 94–97 & 123–124).

(4) Plaintif hanya dikehendaki pada peringkat pliding untuk mendakwa terdapat hubungan fakta. Dia telah memplid bahawa: (a) defendan kedua sedang berkhidmat di klinik defendan pertama; (b) defendan pertama mengendalikan dan menguruskan klinik tersebut; dan (c) perbuatan-perbuatan yang didakwa berlaku dalam skop pengaturan tersebut. Dakwaan-dakwaan ini memenuhi ambang minimum untuk membuktikan tuntutan prima facie bagi liabiliti vikarius. Sama ada hubungan tersebut adalah hubungan pekerjaan, agensi, penyeliaan atau integrasi komersial harus ditentukan semasa perbicaraan, bukan pada peringkat pembatalan awal. Oleh itu, tuntutan terhadap defendan kedua tidak boleh dibatalkan (lihat perenggan 105–107 & 113).]

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Lim Yoke Kong v Sivapiran a/l Sabapathy [1992] 2 MLJ 571, SC (refd)

Muhamad Solleh bin Saarani & Anor v Norruhadi bin Omar & Ors [2010] 9 MLJ 603, HC (refd)

Obata Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd and other cases

[2022] 9 MLJ 212, HC (refd)
Sime Darby Bhd & Ors v Dato' Seri Ahmad Zubair @ Ahmad Zubir bin Hj Murshid & Ors (Tun Musa Hitam & Ors, third parties) [2012] 9 MLJ 464, HC (refd)
Various Claimants v Barclays Bank plc [2020] UKSC 13, SC (refd)
Vista Specialist Eye Center Sdn Bhd v Dato' Loo Son Yong and another appeal [2016] 5 MLJ 832, CA (folld)

Harjit Singh Sandhu (Harjit Sandhu, Wan & Assoc) for the plaintiff.
Amos Siew Yih Jhien (with Mohd Ashraf bin Ramli and Nicole Bor Wen Shen) (Azim, Tunku Farik & Wong) for the defendants.

Asmah Musa JC:

INTRODUCTION

[1] These grounds of judgment concern two separate applications filed by the defendants under O 18 r 19(1)(a), (b), and (d) of the Rules of Court 2012 ('the ROC'). Although filed independently, both applications seek substantially the same result-namely that the plaintiff's action be struck out at the threshold.

[2] Enclosure 14 is the application by the second defendant ('D2'), a medical practitioner who authored the psychiatric referral letter forming the foundation of the plaintiff's complaint. Enclosure 15 is the application by the first defendant ('D1'), the entity operating Klinik As-Salam, where D2 was practising at the material time.

[3] The plaintiff opposes both applications. She contends that her statement of claim raises substantial and serious issues of medical negligence, breach of confidentiality, misuse of medical information, and vicarious liability that merit full adjudication through a proper trial.

[4] After careful consideration of the affidavits, submissions, and authorities, I find that neither defendant has met the high threshold required to justify striking out the plaintiff's action. The applications are dismissed for the detailed reasons which follow.

FACTUAL BACKGROUND

The referral letter

[5] On 22 June 2018, the plaintiff was brought by family members to Klinik As-Salam, operated by D1; after experiencing emotional distress following the ingestion of medication. She was examined not by the second

defendant ('D2') but by another doctor, Dr Nik Aiman. No psychiatric diagnosis was made at that time; only a general recommendation for follow-up was recorded.

[6] On *28 June 2018*, the second defendant issued a *psychiatric referral letter* purporting to diagnose the plaintiff with 'bipolar disorder' and recommending psychiatric evaluation.

[7] Central to the plaintiff's case is her allegation that this letter was written *without any consultation, examination, or clinical assessment*, and without her knowledge or consent. She pleads that she did not attend the clinic on that date, and that the second defendant had no basis for issuing such a medical opinion.

[8] The plaintiff further alleges that the referral letter was *improperly disclosed* to her then-husband, rather than being given to her personally or in accordance with standard medical procedures. The plaintiff contends that this act constitutes a serious breach of medical ethics and confidentiality.

Discovery of the letter in custody proceedings

[9] According to the plaintiff, she only became aware of the existence of the referral letter at a much later stage, when her then-husband produced it during *custody proceedings* in the family court. She asserts that the letter was used to challenge her fitness as a parent and had a detrimental effect on the outcome of those proceedings.

[10] The plaintiff says that prior to its use in court, she had no knowledge that such a letter existed or that it had been passed to her husband. She alleges that the act was 'concealed' from her, whether deliberately or otherwise.

Resulting harm alleged

[11] The plaintiff asserts that as a direct consequence of the wrongful issuance and disclosure of the referral letter, she suffered emotional distress, reputational damage, and adverse consequences in the custody proceedings for her children.

[12] Her claim is framed in tort, alleging:

(a) professional negligence by D2;

(b) breach of confidentiality;

(c) misuse of medical information; and

(d) vicarious liability of D1 as the clinic operator.

PROCEDURAL HISTORY

[13] The plaintiff initiated this civil action by filing a *writ of summons on 28 June 2024 at approximately 12:10am*. The timing is significant because the defendants contend that the six-year limitation period expired on *27 June 2024.*

[14] The plaintiff's statement of claim ('SOC'), filed in due course, sets out the allegations summarised above.

[15] D2 filed encl 14 seeking to strike out the action for being time-barred and for disclosing no reasonable cause of action. D1 subsequently filed encl 15, advancing similar arguments but also asserting that it cannot be held vicariously liable for D2's conduct.

[16] The plaintiff filed affidavits in reply, contesting the limitation argument and disputing the defendants' characterisation of the facts.

[17] Both applications were heard together due to the overlap in issues, although separate affidavits and submissions were filed.

THE ISSUES FOR DETERMINATION

[18] Based on the pleadings and submissions, the following issues arise for determination:

Whether the plaintiff's claim is time-barred under s 6(1)(a) of the Limitation Act 1953

[19] The defendants argue that the plaintiff's cause of action accrued on 28 June 2018, and thus the six-year limitation period expired on 27 June 2024. The plaintiff filed her writ about ten minutes into 28 June 2024, rendering it out of time by one day.

[20] The plaintiff disputes this, arguing that s 29 of the Limitation Act applies because the wrongful act was 'concealed' from her. She contends that the limitation period should commence from the date she discovered the referral letter during custody proceedings.

Whether the SOC discloses a reasonable cause of action under O 18 r 19(1)(a)

[21] This requires consideration of whether, on the face of the SOC, the plaintiff has pleaded facts which, if proven, would entitle her to relief. The defendants contend that she has not.

Whether the claim is frivolous, vexatious, or an abuse of process under O 18 r 19(1)(b) and (d)

[22] The defendants argue that the claim lacks merit and is brought with improper motives.

Whether the action against D1 should be struck out for lack of vicarious liability

[23] D1 contends that D2 was acting independently and that no employer-employee or principal-agent relationship existed.

Whether the applications should be refused because the matters raise triable issues

[24] It is trite that if a pleading raises even one bona fide triable issue, a court must not strike it out. This principle, articulated in *Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd* [1993] 3 MLJ 36 underpins the court's determination.

STANDARD FOR STRIKING OUT UNDER O 18 R 19

[25] Before moving to substantive analysis, it is necessary to restate briefly the legal principles governing striking out applications.

[26] The jurisdiction is *draconian* and must be exercised sparingly. The Court must be satisfied that the claim is o*bviously unsustainable, plainly hopeless*, or *beyond salvation*, even if all pleaded facts were assumed true.

[27] Disputed facts, matters requiring evidence, or issues involving evaluative judgment are inappropriate for summary disposal.

[28] With this framework in mind, I turn now to the submissions of the parties.

SUMMARY OF THE SECOND DEFENDANT'S SUBMISSIONS (ENCL 14)

Limitation — Action filed out of time

[29] D2 submits that the plaintiff's cause of action accrued on *28 June 2018*, the date he issued the psychiatric referral letter. Pursuant to s 6(1)(a) of the

Limitation Act 1953, any action in tort must be brought within six years from the date the cause of action arose. Therefore, the limitation period expired on *27 June 2024.*

[30] It is emphasised that the plaintiff's writ was filed on 28 June 2024 at approximately 12:10am, thus *one day late*, rendering the action time-barred.

[31] D2 relies on the strict approach adopted in:

(a) *Vista Specialist Eye Center Sdn Bhd v Dato' Loo Son Yong and another appeal* [2016] 5 MLJ 832;

(b) *Obata Ambak Holdings Sdn Bhd v Prema Bonanza Sdn Bhd and other cases* [2022] 9 MLJ 212; and

(c) *Muhamad Solleh bin Saarani & Anor v Norruhadi bin Omar & Ors* [2010] 9 MLJ 603,

to argue that even a one-day delay is fatal and the court has no discretion to extend time.

[32] According to D2, the plaintiff's attempt to invoke s 29 (fraud or concealment) is misconceived. He maintains that the referral letter was properly recorded in clinic notes, and the plaintiff could have obtained it earlier with reasonable diligence. D2 denies concealing the document and contends that the plaintiff's reliance on late discovery is unsustainable.

No breach of duty or negligence

[33] D2 denies the plaintiff's assertion that the referral letter amounted to a negligent medical act. He submits that:

(a) the letter was not a diagnosis, but merely a referral note;

(b) it was prepared based on existing clinical notes entered by another doctor, Dr Nik Aiman; and

(c) it was issued upon the *request of the plaintiff's family*, who sought psychiatric evaluation for her.

[34] D2 argues that the plaintiff's allegations amount to mere dissatisfaction with medical opinion, which is not actionable. He cites medical-ethics principles permitting a doctor to issue a referral based on available information.

[35] D2 further submits that any subsequent use of the referral letter in custody proceedings is beyond his knowledge and control, and thus *causation is not established.*

No concealment — Section 29 inapplicable

[36] D2's position is that disclosure of the letter to the plaintiff's husband does not constitute concealment. He argues that:

(a) the referral letter was part of the clinic's record;

(b) the plaintiff could have requested her medical records at any time; and

(c) there was no deliberate withholding or fraudulent act.

[37] As such, s 29 cannot apply, and the limitation period must be calculated strictly.

Suit is frivolous and an abuse of process

[38] D2 contends that the plaintiff's claim is baseless, speculative, and designed to harass him. He argues that the absence of a clear causal link to the plaintiff's alleged harm renders the suit frivolous.

[39] Given these reasons, he prays for the statement of claim to be struck out under O 18 r 19(1)(a), (b), and (d).

SUMMARY OF THE FIRST DEFENDANT'S SUBMISSIONS (ENCL 15)

D1 was not responsible for issuing the letter

[40] The first defendant ('D1'), Salam Alliance Sdn Bhd, submits that it cannot be held liable for the acts of the second defendant. D1 maintains that:

(a) it only manages the administrative aspects of the clinic;

(b) it does not supervise clinical decisions; and

(c) the issuance of the referral letter was the sole act of D2, performed in his professional capacity.

[41] D1 argues that the plaintiff's statement of claim does not plead specific facts establishing a relationship of *employment, control, supervision, or agency* between D1 and D2.

[42] Therefore, the claim of vicarious liability is, in D1's view, wholly unsustainable.

No reasonable cause of action

[43] D1 submits that the plaintiff has failed to plead any direct wrongdoing by D1. There is no allegation that:

(a) D1 issued the referral letter;

(b) D1 authorised it;

(c) D1 knew of it; or

(d) D1 disclosed it.

[44] D1's role, as pleaded, is limited to administrative management. This, it argues, is insufficient to impose liability for professional acts carried out by an independently licensed doctor.

[45] Relying on *Sime Darby Bhd & Ors v Dato' Seri Ahmad Zubair @ Ahmad Zubir bin Hj Murshid & Ors (Tun Musa Hitam & Ors, third parties)* [2012] 9 MLJ 464, D1 asserts that a claim must be struck out where it is 'obviously unsustainable'.

Late filing and procedural non-compliance

[46] D1 supports D2's arguments on limitation, emphasising that the plaintiff's case is time-barred.

[47] D1 also points to the *late service of the writ*, more than one month after filing, which it argues reflects a lack of bona fides.

[48] D1 submits that cumulative procedural non-compliance warrants striking out under O 18 r 19(1)(d) as an abuse of process.

Suit is vexatious

[49] D1 argues that the plaintiff is attempting to create corporate liability where none exists, solely to 'drag the clinic into a private dispute' between the plaintiff and her former husband.

[50] The claim is said to be vexatious and oppressive.

SUMMARY OF THE PLAINTIFF'S SUBMISSIONS

Limitation — Section 29 applies

[51] The plaintiff contends that s 29 of the Limitation Act 1953 postpones the start of the limitation period where material facts have been concealed.

[52] She argues that:

(a) she never knew about the referral letter;

(b) it was never given to her;

(c) it was secretly handed to her husband; and

(d) she only discovered it during custody proceedings.

[53] The plaintiff contends that D2's action constitutes *concealment*, since the letter was about her but given to another person without consent.

[54] She relies on *Lim Yoke Kong v Sivapiran a/l Sabapathy* [1992] 2 MLJ 571, where the court held that concealment postpones limitation until discovery.

[55] She submits that whether concealment occurred is a *triable issue*, rendering striking out inappropriate.

Reasonable cause of action — Negligence and confidentiality

[56] The plaintiff emphasises that she has pleaded:

(a) failure to examine;

(b) issuing a psychiatric diagnosis without consultation;

(c) wrongful disclosure to her husband;

(d) breach of confidentiality under MMC guidelines; and

(e) harm caused in custody proceedings.

[57] These, she argues, clearly constitute a reasonable cause of action in tort.

[58] She cites MMC's Code of Professional Conduct and Guidelines on Confidentiality, which require explicit patient consent before disclosure to a third party. Consent from a family member is *not* consent from the patient.

[59] The plaintiff contends that whether D2 was practising as part of D1's clinic is a question of fact requiring discovery and evidence.

[60] She submits that medical practice structures often involve shared arrangements, and the nature of these relationships cannot be conclusively determined at this preliminary stage.

[61] As such, D1 's vicarious liability cannot be summarily dismissed.

Suit is not frivolous or vexatious

[62] The plaintiff asserts that allegations of medical negligence and confidentiality breaches are serious matters.

[63] There is no basis to portray her claim as frivolous or an abuse of process.

[64] She submits that the High Court should not pre-emptively deny her right to a full trial when multiple disputed facts exist.

COURT'S ANALYSIS

Issue 1: Whether the plaintiff's claim is time-barred

The legal framework

[65] It is trite that the general limitation period for tortious actions is governed by s 6(1)(a) of the Limitation Act 1953, which prescribes a six-year period commencing on the date the cause of action 'accrued.'

[66] In a negligence action, a cause of action ordinarily accrues when the wrongful act or omission occurs, not when the damage is discovered. This principle was reaffirmed in *Vista Specialist Eye Center Sdn Bhd v Dato' Loo Son Yong and another appeal* [2016] 5 MLJ 832, which binds this court.

[67] However, s 29 introduces an exception where the right of action has been *fraudulently concealed*, or where 'any fact relevant to the right of action' has been deliberately withheld. In such circumstances, the limitation period does not begin until the plaintiff has discovered, or could reasonably have discovered, the concealed facts.

[68] The relevant question is therefore not merely when the referral letter was written, but *whether the plaintiff knew, or reasonably could have known, of the existence of the letter* before the date she says she discovered it.

Application to the present case

[69] The plaintiff avers that she was wholly unaware that D2 had written the referral letter dated 28 June 2018. She asserts she did not attend the clinic on that date, received no treatment, and was never given a copy of the letter. She alleges that the letter was instead handed directly to her husband.

[70] On the affidavit before me, it is undisputed that the plaintiff *did not receive the letter in 2018*, and that it was her husband who produced it in *custody*

proceedings years later. This is the moment the plaintiff states she first became aware of the letter.

[71] D2 contends that the plaintiff could have requested her medical records earlier and that the letter was not concealed. The plaintiff argues that she had no reason to request clinical records for a date when she did not attend the clinic at all.

[72] Whether the second defendant's act of giving the letter to the husband amounted to 'concealment' within the meaning of s 29 is a question of fact. The court cannot, at this interlocutory stage, simply assume that the plaintiff ought to have discovered the letter earlier.

[73] In *Lim Yoke Kong v Sivapiran*, the court held that concealment includes circumstances where a defendant, knowing of the plaintiff's lack of knowledge, fails to disclose material facts. The existence of the referral letter was plainly a material fact relevant to the plaintiff's potential cause of action.

Disputed facts cannot be resolved summarily

[74] The limitation issue here is deeply fact-sensitive. It requires determination of:

(a) whether the plaintiff had actual knowledge of the letter in 2018;

(b) whether she could reasonably have discovered it earlier;

(c) whether D2's conduct in providing the letter to the husband constituted 'concealment'; and

(d) when the plaintiff first became aware of the letter during custody proceedings.

[75] Each of these questions requires evidence, cross-examination, and judicial evaluation of credibility-not affidavit assertion.

[76] The Federal Court in *Bandar Builder Sdn Bhd v UMBC* cautioned against resolving fact-intensive disputes at the striking out stage. That principle applies squarely here.

Conclusion on limitation

[77] At this preliminary stage, I am not satisfied that the defendants have shown that the action is *plainly time-barred*. The plaintiff's reliance on s 29 cannot be dismissed as unsustainable. Accordingly, the limitation argument is *unsuitable for summary disposal.*

[78] The issue shall proceed to trial where evidence may be properly tested.

Issue 2: Whether the plaintiff has pleaded a reasonable cause of action

The plaintiff's allegations

[79] The plaintiff alleges that:

(a) D2 issued a psychiatric referral letter without examination;

(b) no consultation took place;

(c) no consent was obtained;

(d) the letter was disclosed to her husband without her authorisation; and

(e) she suffered harm in custody proceedings as a result.

[80] These allegations, if proven, form a coherent cause of action in:

(a) negligence;

(b) breach of duty of care;

(c) breach of confidentiality; and

(d) wrongful disclosure of medical information.

[81] The test under O 18 r 19(1)(a) is not whether the plaintiff will ultimately succeed, but whether the pleading discloses a cause of action.

Negligence and duty of care

[82] The plaintiff pleads that she was a patient of the clinic and that D2 was a medical practitioner at the material time. On these pleaded facts, a doctor-patient relationship, and therefore a *duty of care*, is prima facie established.

[83] Whether the duty was breached by failing to examine the plaintiff before issuing a psychiatric referral letter requires medical evidence. It is plainly unsuitable for disposal at interlocutory stage.

Breach of confidentiality

[84] Medical confidentiality is a core principle of Malaysian medical law and ethics. The MMC Code of Professional Conduct and MMC Confidentiality Guidelines clearly state that:

A (a) a doctor must obtain *explicit consent* before disclosing patient information; and

(b) disclosure to family members is prohibited unless expressly authorised or clinically necessary.

B

[85] The plaintiff alleges that D2 disclosed sensitive psychiatric information to her husband without consent. This, if proven, constitutes a breach of legal and ethical duty.

C **[86]** Whether the husband's request constituted lawful 'authorisation' is again a factual issue unsuitable for striking out.

Wrongful disclosure — Not a purely medical issue

D **[87]** The defendants submit that the letter was a mere referral note, not a diagnosis. However, the content of the letter is not before the court at this stage. Even a referral note containing psychiatric implications may be sensitive and confidential.

E

[88] The plaintiff alleges that the letter portrayed her as psychiatrically unstable and was later used to challenge her parental fitness. These matters cannot be dismissed without evidence.

F **[89]** The court cannot, at the striking out stage, make findings on intention, context, or appropriateness of medical communication.

Causation and loss

G **[90]** The defendants argue that any use of the letter in family court was beyond their control.

[91] However, in tort, the question is whether harm was a *reasonably foreseeable* consequence. Whether harm was remote or causally connected is an H issue for trial.

[92] The plaintiff has pleaded recognisable damage: reputational injury, emotional harm, and detrimental impact in custody proceedings. These suffice I to maintain a cause of action.

Conclusion on reasonable cause of action

[93] The statement of claim clearly discloses a triable cause of action. Whether the claim will ultimately succeed is a matter for trial, not summary disposal.

Issue 3: Whether the claim is frivolous, vexatious, or an abuse of process

[94] The defendants' assertion that the suit is frivolous is not borne out by the pleadings. Allegations of medical negligence and breach of confidentiality are inherently serious.

[95] There is no evidence of improper motive, collateral purpose, or mala fides on the part of the plaintiff. She initiated this action after discovering the referral letter in court proceedings.

[96] The late service of the writ, although irregular, does not demonstrate prejudice or ulterior motive.

[97] The threshold for abuse of process is high and requires clear evidence. No such evidence exists here.

Issue 4: Whether the claim against D1 should be struck out for lack of vicarious liability

The legal test for vicarious liability

[98] Vicarious liability arises where a defendant is legally responsible for the tortious acts of another person by virtue of a *relationship of control, supervision, or integration.* Traditionally this relationship was employer-employee, but modern jurisprudence recognises a wider range of relationships.

[99] The UK Supreme Court in *Various Claimants v Barclays Bank plc* [2020] UKSC 13 affirmed that liability may arise even where the tortfeasor is not an employee, provided the tortfeasor's work is sufficiently integrated into the defendant's business.

[100] Malaysian courts have followed similar principles, focusing on:

(a) the degree of control exercised;

(b) the nature of the arrangement;

(c) who benefits from the activity; and

(d) whether the work is integral to the defendant's undertaking.

[101] Whether such a relationship exists is *fact-sensitive*, often requiring examination of contracts, clinic operational structures, payment arrangements, and testimony.

Application to D1's position

[102] D1 asserts that:

(a) it is merely an administrative entity;

(b) it exercised no control over D2's clinical decisions; and

(c) D2 acted independently.

[103] These assertions are contested. The plaintiff pleads that:

(a) the clinic is operated by D1;

(b) D2 practised under the clinic's structure; and

(c) patients attending the clinic would reasonably perceive D1 as responsible for the services rendered.

[104] It is common in Malaysian general-practice clinics for doctors to operate under hybrid arrangements-locum, contract-for-services, partnership, revenue-sharing, or employment. The court cannot assume the nature of that relationship without evidence.

Pleadings are sufficient to raise a triable issue

[105] The plaintiff is only required at the pleading stage to allege a factual nexus. She has pleaded that:

(a) D2 was practising at the first defendant's clinic;

(b) D1 operated and managed the clinic; and

(c) the acts occurred within the scope of that arrangement.

[106] These allegations meet the *minimum threshold* to establish a prima facie claim of vicarious liability.

[107] Whether the relationship was one of employment, agency, supervision, or commercial integration must be determined at trial, not at a preliminary striking out stage.

Evidence required at trial

[108] To determine D1's liability, the court must examine:

(a) any written contract between D1 and D2;

(b) remuneration or fee structures;

(c) whether D1 held itself out as responsible for clinical practice; and

(d) how patients, including the plaintiff, perceived the clinic's responsibility.

[109] These matters cannot be conclusively resolved through affidavits alone.

[110] Striking out now would pre-emptively deprive the plaintiff of the opportunity to establish these facts.

Conclusion on vicarious liability

[111] The plaintiff's pleadings disclose a tenable basis for vicarious liability.

[112] The issue is quintessentially one requiring viva voce evidence.

[113] Therefore, the claim against D1 should not be struck out.

Issue 5: Whether the suit is frivolous, vexatious, or an abuse of process

High threshold for abuse of process

[114] The categories of abuse of process are not closed, but typically involve improper motives, repeated litigation, intention to harass, or clear absence of legal foundation.

[115] Courts must exercise caution before branding a litigant's claim as frivolous or vexatious. Such a finding carries serious consequences and should only be made in the clearest cases.

Analysis of the allegations

[116] The plaintiff alleges serious wrongdoing: issuing a psychiatric referral letter without examination, improper disclosure, and breach of confidentiality.

[117] These allegations raise legitimate concerns regarding:

(a) professional ethics;

(b) patient autonomy;

(c) medical confidentiality; and

(d) misuse of sensitive information.

[118] Such claims are neither trivial nor brought lightly.

[119] The defendants' position is that the referral letter was innocuous and properly issued. This, however, is a matter for trial, not a basis for striking out.

Procedural irregularities do not establish abuse

[120] D1 relies on late service of the writ to argue abuse of process.

[121] While service was not prompt, the defendants were eventually served, and no prejudice has been demonstrated.

[122] Defects in service may be cured; they do not justify depriving a litigant of her right to a trial unless bad faith is clearly established.

Conclusion on abuse of process

[123] I find no basis to characterise the plaintiff's action as frivolous, vexatious, or an abuse of process.

[124] The seriousness of the allegations and the existence of disputed facts strongly support allowing the matter to proceed.

ASSESSMENT OF THE CLAIM

[125] In striking out applications, the court must consider the claim as a whole, not isolate individual paragraphs or causes of action.

[126] The plaintiff raises several core factual disputes:

(a) did D2 examine the plaintiff before issuing the referral letter?

(b) did the plaintiff consent to the letter?

(c) why was the letter given to her husband?

(d) when did she first discover it?

(e) what was D1's relationship with D2?

(f) was confidentiality breached? and

(g) did the letter cause harm in custody proceedings?

[127] These questions cannot be answered based on affidavits alone.

[128] Each requires oral evidence, professional testimony (possibly expert medical evidence), and cross-examination.

[129] Where factual disputes are central, the rule in *Bandar Builder* requires the court to allow the case to proceed to trial.

FINAL FINDINGS

[130] Having considered all materials, I find:

(a) limitation:
The plaintiff has raised a bona fide triable issue under s 29. The limitation defence cannot be resolved summarily;

(b) reasonable cause of action:
The statement of claim discloses actionable allegations of negligence, breach of confidentiality, and wrongful disclosure;

(c) vicarious liability:
The nature of D1's relationship with D2 is a factual matter unsuitable for striking out; and

(d) abuse of process:
No evidence supports the assertion that the plaintiff's suit is frivolous or vexatious.

[131] These matters, individually and collectively, justify the refusal of both striking out applications.

ORDERS OF THE COURT

[132] For the reasons stated in this judgment, the court makes the following orders:

(a) encl 14 (second defendant's application) is dismissed;

(b) encl 15 (first defendant's application) is dismissed;

(c) costs of both applications shall be costs in the cause; and

(d) the matter shall proceed to full trial before this court.

Enclosures 14 and 15 dismissed with costs in the cause; matter shall proceed to full trial.

Reported by Dzulqarnain Ab Fatar